

2020 ADVANCED DUI TRIAL ADVOCACY

August 31 – September 3, 2020
Phoenix, Arizona



Tuesday, September 1, 2020

Useful DUI Studies

Presented by:

William Burke
Tempe City Prosecutor

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
3838 N. Central Ave, Suite 850
Phoenix, Arizona 85012

ELIZABETH BURTON ORTIZ
EXECUTIVE DIRECTOR

From: Ronald Skwartz [<mailto:RSKWARTZ@AZDPS.GOV>]
Sent: Thursday, January 17, 2019 11:12 AM
To: Beth Barnes <beth.barnes@phoenix.gov>
Cc: Robert Stephenson <RSTEPHENSON@AZDPS.GOV>
Subject: Re: Question from Trial - large breath samples

Beth,

First off Eric again does not remember exact numbers (see attachment pg 11). There was no 0.05 reading at 1.4 liters. Anyway Straubus personal in-house paper (non-peer reviewed) is an old one that gets recycled from time to time. There are several misleading statements made in the paper which when contrasted with how Arizona conducts the breath test (AZ software & procedure versus Federal DOT software) along with current relevant research BrAC testing become invalid points of discussion.

The short answer has two parts: (1) Straubus looked at lung alcohol & mouth alcohol and (2) partition ratio based on breath sample collection time. His language & math are misleading since the partition ratio in the lung starts off high in the upper bronchial tree and goes down as you go deeper in the lung to what a person really is under normal circumstances.

To explain everything via email would be a novel and then there is the whole executive sworn-staff 28-Day review and productivity tracking (casework output is the labs #1 prime directive) in blood alcohol & drug toxicology, so my time is not my own. I have cc'd Robert on this email since he may have additional information to offer.

Respectfully,

Ron Skwartz, D-ABFT-FA
Forensic Scientist IV
Arizona Department of Public Safety
Central Regional Crime Laboratory
Phone: 602-223-2225

From: Beth Barnes <beth.barnes@phoenix.gov>
Sent: Wednesday, January 16, 2019 6:06 PM
To: Erin Boone; Ronald Skwartz
Subject: FW: Question from Trial - large breath samples

This is just deep lung air, correct? Is that what the Staubus study looked at?

Thx
Beth

To: Beth Barnes <beth.barnes@phoenix.gov>

Subject: Question from Trial

Hi Beth,

Hope all is well. I had Eric Brown in a trial testify to a study conducted by Dr. Alfred Staubus. He used this study to state that a person that provides a large breath sample (4 to 5 liters of breath) can increase the reported alcohol concentration. For example, he said there was a study where the individual provide a 1.4 liter sample and the alcohol concentration came back at a .05 and that the same individual provided over a 4 liter sample and it came back just over a .083. He also said that some intox machines have the software capability to measure the breath sample provided but that ours do not. I don't know if you have any thoughts, but any insight/help you can provide would be greatly appreciated.

Very respectfully,

Josh